



September 19, 2000

Mr. Henry Boening
Galveston Independent School District
P. O. Box 660
Galveston, Texas 77553

OR2000-3622

Dear Mr. Boening:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139217.

The Galveston Independent School District (the "district") received a request for information pertaining to its personnel for the five-year period ending June 19, 2000. Specifically, the requestor seeks: 1) the full names, dates of birth, and addresses of all employees who were terminated; 2) the full names, dates of birth, and addresses of all employees who resigned; 3) the reasons for the employees' terminations or resignations; 4) whether each of the terminated or resigned employees was eligible for rehire; 5) the dates of the employees' hiring and firing or resignation; 6) the positions held by the employees; and 7) the salaries of the employees. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the information.¹

Section 552.117 excepts from disclosure the home address, home telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests under section 552.024 of the Government Code that this information be kept confidential. Therefore, section 552.117 requires you to withhold this information if the individual requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the individual made the request for confidentiality

¹We assume that the "representative sample" of records submitted to this office is truly representative of all of the information at issue. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The district must withhold section 552.117(1) information relating to any current or former employee who elected, prior to the date the district received the request for information, not to allow public access to that information. We note that you have submitted a section 552.024 election form which includes only the home address and home telephone number. Only section 552.117(1) information which an employee actually elects to keep confidential is confidential under section 552.117. Because this employee did not elect to keep either his social security number or his family member information confidential, you may not withhold the social security number or family member information of the employee whose information you submitted as a representative sample under section 552.117. You must release the family member information.

However, the social security number may be required to be withheld under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

You also assert that some of the requested information is confidential under section 552.101 in conjunction with section 21.355 of the Education Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 21.355 provides that, "[a] document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the "Summative Annual Appraisals," "Observation Summaries" with "PDAS Formal Observations," and "Teacher Self-Report Form" submitted for our review are confidential under section 21.355 of the Education Code. Therefore, pursuant to

section 552.101 of the Government Code, the district must withhold those documents. The district must release the remaining documents, with the redactions we have indicated.

Section 552.101 also encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). This office has found that an individual's personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). The common law privacy protecting personal financial information extends to optional benefit choices and beneficiary information. *See* Open Records Decision No. 600 at 11 (1992). We have marked the information the district must withhold under the common law privacy element of section 552.101.

In summary, the district must withhold the section 552.117(1) information of each employee who made a timely section 552.024 election not to allow public access to that specific item of information. If an employee did not elect to keep his family member information confidential prior to the date of the request, that information must be released. Furthermore, unless the district obtained or maintains social security numbers pursuant to a provision of law enacted on or after October 1, 1990, the social security number of any employee who did not timely elect to keep that information confidential must be released. The district must withhold the documents we have identified as evaluating the performance of a teacher or administrator under section 552.101 in conjunction with section 21.355 of the Education Code. Finally, the district must withhold the personal financial information we have marked under section 552.101. The district must release the remaining requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 139217

Encl. Submitted documents

cc: Mr. Kevin Howard
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(w/o enclosures)